

REMARKS

Reconsideration of this application and reexamination of the claims are respectfully requested.

By entry of this amendment claims 1-25, 27, 30, and 44 are cancelled; claims 26, 28, 29, 31-35, 42, and 45 are amended; and claims 46 to 52 are added. Claims 26, 28, 29, 31-43, and 45-52 are pending.

The amendment to claim 26 finds support, for example, in claims 26 and 27 as filed. The amendment to claim 29 finds support, for example, in claims 29 and 30 as filed. The amendments to claims 28 and 31 find support, for example, in paragraphs 035 and 054, and in Figures 4 and 5. The remaining amendments find support, for example, in the original claims. New claims 46 and 47 find support, for example, in original claim 45 and at paragraph 037. New claims 48-51 find support, for example, at paragraphs 018, 062, 063, 073, and 074. New claim 52 finds support, for example, at paragraph 034. The amendments to the claims do not introduce new matter.

Applicants submit a substitute specification herewith. The substitute specification incorporates an amendment to paragraph 047 that was previously made in the Preliminary Amendment filed October 4, 2004. Applicants are not submitting a marked-up copy showing this change because that Amendment included a marked-up copy indicating the change and that change has already been entered by the Office. The Office also requested that Applicants correct certain typographical errors. Applicants note that those errors are not present in their copy of the application as filed. Applicants assume that the errors identified by the Office may have arisen when the Office scanned the application. In any event, the errors are not present in the substitute specification. Because the alleged errors are not present in Applicants' copy of the

specification, and because Applicants do not believe they have amended any such errors in the application, Applicants are not submitting a marked-up copy relating to any of those changes that the Office requested.

The amendments to the sequence identification numbers in paragraphs 029 and 030 correct an error in the specification as filed. Applicants submit that this error was obvious to the skilled artisan because the correct sequence identification numbers appeared in paragraphs 035 and 054 of the application as filed, and also were provided together with the sequences shown in Figures 4 and 5. Thus, the amendments to the specification do not introduce new matter.

Priority Statement and Specification

The Examiner required that Applicants amend the priority statement in paragraph [001] of the application and correct certain typographical errors in the specification. Applicants submit a substitute specification herewith that does not reflect the alleged errors identified by the Office. By way of an amendment herein Applicants have modified the priority statement as requested by the Examiner. Acknowledgement that the amendment requested by the Examiner have been made is respectfully requested.

Claim Objection

The Examiner objected to claim 42 because it recited “polynucleotid” rather than “polynucleotide”. Applicants have corrected this typographical error and request that this objection be withdrawn.

Rejection Under 35 U.S.C. § 101

Claims 26-31 were rejected under 35 U.S.C. § 101 as allegedly directed to non-statutory subject matter. (Office Action at Item 8.) Applicants have cancelled claims 27 and 30, and have amended claims 26, 28, 29, and 31 to recite that the claimed polynucleotides are “purified,” thus obviating the basis for this rejection. Applicants request that this rejection be withdrawn.

Rejections Under 35 U.S.C. § 112, Second Paragraph

Claims 26, 27, 29, 30, 34, and 35 were rejected under 35 U.S.C. § 112, second paragraph, as allegedly indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. (Office Action at Items 10-12.) Regarding claims 26 and 27, the Examiner based the rejection on alleged confusion regarding which “particular sequence” the claims refer to. Regarding claims 29 and 30, the Examiner based the rejection on alleged confusion caused by the recitation in claim 29 of “codon 58” and the recitation in claim 30 of “codon 48”. Applicants note that amended claim 26 recites “SEQ ID NO: 30,” that amended claim 29 recites “SEQ ID NO: 29, and that claims 27 and 30 have been cancelled. Applicants submit that the claims are definite and request that this rejection be withdrawn.

The basis for the rejection of claims 34 and 35 was that the claims depended from non-elected claims. Applicants have amended the claims to make them independent. Applicants submit that claims 34 and 35 as amended are definite and request that this rejection be withdrawn.

Rejection for Statutory Double Patenting

Claims 26-43 and 45 were provisionally rejected under 35 U.S.C. § 101 as claiming the same invention as that of claims 26-43 and 45 of copending Application No. 10/216,817. (Office Action at Item 14.) Applicants request that this provisional rejection be held in abeyance until this application or Application No. 10/216,817 is allowed.

Rejection Under 35 U.S.C. § 102

Claims 32 and 45 were rejected under 35 U.S.C. § 102(e) as allegedly anticipated by Fleischmann et al (U.S. Pat. No. 6,294,328) (Office Action at Item 16.) According to the Examiner "Fleischmann teach a purified polynucleotide (SEQ ID NO:2) which comprises the instant SEQ ID NO:1, 2, 3, 4 and 5 (residues 1285866 to 1285886; residues 1286681 to 1286665; residues 4385490 to 4385509; residues 4386625 to 4386607; residues 1478734 to 1478718) (see sequence listings)."

In response, Applicants note that claim 32 and 45 has been amended to recite "consisting of" and claim 45 has been amended so that it no longer recites SEQ ID NO: 1, 2, 3, 4, or 5. Applicants submit that Fleischmann does not disclose every element of any of the claims and that the claims are patentable over Fleischmann. Applicants request that this rejection be withdrawn.

Conclusion

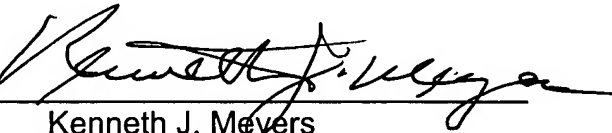
In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: April 17, 2006

By: 
Kenneth J. Meyers
Reg. No. 25,146
Telephone: (202) 408-4033
e-mail: ken.meyers@finnegan.com